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 UNITED STATES OF AMERICA
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10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12

13 UNITED STATES OF AMERICA,) No. ED CR 10-00006-VAP
)
14 Plaintiff,) <u>PLEA AGREEMENT FOR DEFENDANT</u>
) <u>NATHAN RAMON WELLS</u>
15 v.)
)
16 NATHAN RAMON WELLS,)
)
17 Defendant.)
)
18)

19 1. This constitutes the plea agreement between NATHAN RAMON
 20 WELLS ("defendant") and the United States Attorney's Office for
 21 the Central District of California ("the USAO") in the above-
 22 captioned case. This agreement is limited to the USAO and cannot
 23 bind any other federal, state, or local prosecuting,
 24 administrative, or regulatory authorities.
 25

26 PLEA

27 2. Defendant agrees to plead guilty to count one of the
 28 indictment in United States v. Nathan Ramon Wells, ED CR No. 10-
 00006-VAP.

1 NATURE OF THE OFFENSE

2 3. In order for defendant to be guilty of count one, which
3 charges a violation of Title 18, United States Code, Section
4 32(a)(5), the following must be true: (1) Defendant willfully
5 interfered with or disabled a person engaged in the authorized
6 operation of an aircraft; (2) The aircraft was in the special
7 aircraft jurisdiction of the United States; and (3) At the time
8 that defendant acted, he acted with a reckless disregard for the
9 safety of human safety. Defendant admits that defendant is, in
10 fact, guilty of this offense as described in count one of the
11 indictment.

12 PENALTIES

13 4. The statutory maximum sentence that the Court can impose
14 for a violation of Title 18, United States Code, Section
15 32(a)(5), is: 20 years' imprisonment; a three-year period of
16 supervised release; a fine of \$250,000 or twice the gross gain or
17 gross loss resulting from the offense, whichever is greatest; and
18 a mandatory special assessment of \$100.

19 5. Supervised release is a period of time following
20 imprisonment during which defendant will be subject to various
21 restrictions and requirements. Defendant understands that if
22 defendant violates one or more of the conditions of any
23 supervised release imposed, defendant may be returned to prison
24 for all or part of the term of supervised release, which could
25 result in defendant serving a total term of imprisonment greater
26 than the statutory maximum stated above.

27 6. Defendant understands that, by pleading guilty,
28

1 defendant may be giving up valuable government benefits and
2 valuable civic rights, such as the right to vote, the right to
3 possess a firearm, the right to hold office, and the right to
4 serve on a jury. Defendant understands that once the court
5 accepts defendant's guilty plea, it will be a federal felony for
6 defendant to possess a firearm or ammunition. Defendant
7 understands that the conviction in this case may also subject
8 defendant to various other collateral consequences, including but
9 not limited to revocation of probation, parole, or supervised
10 release in another case and suspension or revocation of a
11 professional license. Defendant understands that unanticipated
12 collateral consequences will not serve as grounds to withdraw
13 defendant's guilty plea.

14 7. Defendant understands that, if defendant is not a United
15 States citizen, the felony conviction in this case may subject
16 defendant to removal, also known as deportation, which may, under
17 some circumstances, be mandatory. The court cannot, and
18 defendant's attorney also may not be able to, advise defendant
19 fully regarding the immigration consequences of the felony
20 conviction in this case. Defendant understands that by entering
21 a guilty plea defendant waives any claim that unexpected
22 immigration consequences may render defendant's guilty plea
23 invalid.

24 FACTUAL BASIS

25 8. Defendant and the USAO agree and stipulate to the
26 statement of facts provided below. This statement of facts is
27 sufficient to support a plea of guilty to the charge described in
28 this agreement and to establish the sentencing guideline factors

1 set forth in paragraph 12 below. It is not meant to be a
2 complete recitation of all facts relevant to the underlying
3 criminal conduct or all facts known to either party that relate
4 to that conduct.

5 On June 3, 2009, California Highway Patrol ("CHP") officers
6 J. Stanton and D. Myers were assisting Cathedral City Police
7 Department ("CCPD") with a possible residential burglary call.
8 While those two CHP officers orbited CHP aircraft N108HP, a
9 Eurocopter AS350B3 helicopter, approximately 700 feet above
10 ground level, defendant used a green laser multiple times to
11 illuminate the cockpit of the police helicopter with a bright
12 green light, which caused both CHP officers to look away, and
13 therefore interfered with their operation of the aircraft. When
14 defendant lasered the CHP helicopter, it was in the special
15 aircraft jurisdiction of the United States.

16 The officers then used their NightSun light to light up the
17 vehicle from which the laser-beam had emanated and followed it
18 throughout Cathedral City. The vehicle, which defendant was
19 driving, ultimately stopped at a residence, and defendant exited
20 the vehicle. CCPD officer D. Hodge arrived at the location and
21 ordered the defendant to the ground. As defendant went to the
22 ground, officer Hodge observed a black pen-like item in
23 defendant's hand. Officer Hodge ordered defendant to drop the
24 pen-like item, which defendant did. Officer Hodge confirmed that
25 the pen-like item was a laser.

26 On January 26, 2010, FBI special agent A. Davis interviewed
27 defendant, and defendant confessed to pointing the laser at the
28 police helicopter. Specifically, defendant admitted that he was

1 driving his car around the "Dream Homes" neighborhood in
2 Cathedral City and noticed a helicopter hovering over that
3 neighborhood. Defendant admitted that he pointed a green laser
4 at the helicopter, which he knew was a police helicopter. When
5 defendant pointed the laser at the police helicopter, defendant
6 acted with a reckless disregard for the safety of human life.

7 WAIVER OF CONSTITUTIONAL RIGHTS

8 9. By pleading guilty, defendant gives up the following
9 rights:

- 10 a) The right to persist in a plea of not guilty.
- 11 b) The right to a speedy and public trial by jury.
- 12 c) The right to the assistance of legal counsel at
13 trial, including the right to have the Court appoint counsel for
14 defendant for the purpose of representation at trial. (In this
15 regard, defendant understands that, despite his plea of guilty,
16 he retains the right to be represented by counsel -- and, if
17 necessary, to have the court appoint counsel if defendant cannot
18 afford counsel -- at every other stage of the proceeding.)
- 19 d) The right to be presumed innocent and to have the
20 burden of proof placed on the government to prove defendant
21 guilty beyond a reasonable doubt.
- 22 e) The right to confront and cross-examine witnesses
23 against defendant.
- 24 f) The right, if defendant wished, to testify on
25 defendant's own behalf and present evidence in opposition to the
26 charges, including the right to call witnesses and to subpoena
27 those witnesses to testify.
- 28 g) The right not to be compelled to testify, and, if

1 defendant chose not to testify or present evidence, to have that
2 choice not be used against defendant.

3 By pleading guilty, defendant also gives up any and all
4 rights to pursue any affirmative defenses, Fourth Amendment or
5 Fifth Amendment claims, and other pretrial motions that have been
6 filed or could be filed.

7 WAIVER OF DNA TESTING

8 10. Defendant has been advised that the government has in
9 its possession the following items of physical evidence that
10 could be subjected to DNA testing:

11 one black, pen-like laser device

12 Defendant understands that the government does not intend to
13 conduct DNA testing of any of this item. Defendant understands
14 that, before entering a guilty plea pursuant to this agreement,
15 defendant could request DNA testing of evidence in this case.
16 Defendant further understands that, with respect to the offense
17 to which defendant is pleading guilty pursuant to this agreement,
18 defendant would have the right to request DNA testing of evidence
19 after conviction under the conditions specified in 18 U.S.C.
20 § 3600. Knowing and understanding defendant's right to request
21 DNA testing, defendant voluntarily gives up that right with
22 respect to both the specific items listed above and any other
23 items of evidence there may be in this case that might be
24 amenable to DNA testing. Defendant understands and acknowledges
25 that by giving up this right, defendant is giving up any ability
26 to request DNA testing of evidence in this case in the current
27 proceeding, in any proceeding after conviction under 18 U.S.C.
28 § 3600, and in any other proceeding of any type. Defendant

1 further understands and acknowledges that by giving up this
 2 right, defendant will never have another opportunity to have the
 3 evidence in this case, whether or not listed above, submitted for
 4 DNA testing, or to employ the results of DNA testing to support a
 5 claim that defendant is innocent of the offense to which
 6 defendant is pleading guilty.

7 SENTENCING FACTORS

8 11. Defendant understands that the Court is required to
 9 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
 10 including the kinds of sentence and sentencing range established
 11 under the United States Sentencing Guidelines ("U.S.S.G." or
 12 "Sentencing Guidelines"), in determining defendant's sentence.
 13 Defendant further understands that the Sentencing Guidelines are
 14 advisory only, and that after considering the Sentencing
 15 Guidelines and the other § 3553(a) factors, the Court may be free
 16 to exercise its discretion to impose any reasonable sentence up
 17 to the maximum set by statute for the crime of conviction.

18 12. Defendant and the USAO agree and stipulate to the
 19 following applicable Sentencing Guidelines factors:

20 Base Offense Level : 18 U.S.S.G. § 2A5.2(a)(2)

21 Acceptance of
 22 Responsibility: -3 U.S.S.G. § 3E1.1

23 **Total Offense Level: 15**

24 The USAO will agree to a downward adjustment for acceptance of
 25 responsibility (and, if applicable, move for an additional level
 26 under § 3E1.1(b)) only if the conditions set forth in paragraph
 27 16 are met. Subject to paragraphs 14 and 15, defendant and the
 28 USAO agree not to seek, argue, or suggest in any way, either

1 orally or in writing, that any other specific offense
2 characteristics, adjustments, or departures relating to the
3 applicable Offense Level be imposed. If, however, after signing
4 this agreement but prior to sentencing, defendant were to commit
5 an act, or the USAO were to discover a previously undiscovered
6 act committed by defendant prior to signing this agreement, which
7 act, in the judgment of the USAO, constituted obstruction of
8 justice within the meaning of U.S.S.G. § 3C1.1, the USAO would be
9 free to seek the enhancement set forth in that section.

10 13. There is no agreement as to defendant's criminal
11 history or criminal history category.

12 14. Defendant and the USAO also agree and stipulate that,
13 taking into account the factors listed in 18 U.S.C. § 3553(a)(1)-
14 (7), a reasonable sentence for defendant is one in the Guidelines
15 range equivalent to an offense level of 13 (two levels below that
16 otherwise provided by the Guidelines) and the applicable criminal
17 history category as determined by the Court, and agree that
18 defendant should be sentenced in accordance with this two-levels
19 below-Guidelines sentencing range. Therefore, subject to
20 paragraph 15, defendant and the USAO agree not to seek, argue, or
21 suggest in any way, either orally or in writing, that the Court
22 impose a sentence outside the sentencing range corresponding to a
23 total offense level of 13 and the criminal history category
24 determined by the Court, except that defendant reserves the right
25 to argue for a split-sentence, that is, a sentence of
26 imprisonment that includes a term of supervised release with a
27 condition that substitutes community confinement (residence in a
28 community treatment center, halfway house, or similar facility)

1 or home detention, provided that at least one-half of the minimum
2 term is satisfied by imprisonment.

3 15. The stipulations in this agreement do not bind either
4 the United States Probation Office or the Court. Both defendant
5 and the USAO are free to: (a) supplement the facts by supplying
6 relevant information to the United States Probation Office and
7 the Court, (b) correct any and all factual misstatements relating
8 to the calculation of the sentence, and (c) argue on appeal and
9 collateral review that the Court's Sentencing Guidelines
10 calculations are not error, although each party agrees to
11 maintain its view that the calculations in paragraph 12 are
12 consistent with the facts of this case.

13 DEFENDANT'S OBLIGATIONS

14 16. Defendant agrees that he will:

15 a) Plead guilty as set forth in this agreement.

16 b) Not knowingly and willfully fail to abide by all
17 sentencing stipulations contained in this agreement.

18 c) Not knowingly and willfully fail to: (i) appear for
19 all court appearances, (ii) surrender as ordered for service of
20 sentence, (iii) obey all conditions of any bond, and (iv) obey
21 any other ongoing court order in this matter.

22 d) Not commit any crime; however, offenses which would
23 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
24 not within the scope of this agreement.

25 e) Not knowingly and willfully fail to be truthful at
26 all times with Pretrial Services, the U.S. Probation Office, and
27 the Court.

28 f) Pay the applicable special assessment at or before

1 the time of sentencing unless defendant lacks the ability to pay
2 and submits a completed financial statement (form OBD-500) to the
3 USAO prior to sentencing.

4 THE USAO'S OBLIGATIONS

5 17. If defendant complies fully with all defendant's
6 obligations under this agreement, the USAO agrees:

7 a) To abide by all sentencing stipulations contained in
8 this agreement.

9 b) At the time of sentencing to move to dismiss the
10 remaining count of the indictment as against defendant.

11 Defendant agrees, however, that at the time of sentencing the
12 Court may consider the dismissed count in determining the
13 applicable Sentencing Guidelines range, where the sentence should
14 fall within that range, the propriety and extent of any departure
15 from that range, and the determination of the sentence to be
16 imposed after consideration of the Sentencing Guidelines and all
17 other relevant factors under 18 U.S.C. § 3553(a).

18 c) At the time of sentencing, provided that defendant
19 demonstrates an acceptance of responsibility for the offense up
20 to and including the time of sentencing, to recommend a two-level
21 reduction in the applicable sentencing guideline offense level,
22 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
23 move for an additional one-level reduction if available under
24 that section.

25 d) To recommend that defendant be sentenced to a term
26 of imprisonment at the low end of the applicable Sentencing
27 Guidelines imprisonment range that is two offense levels below
28 that calculated by the Court, provided that the total offense

1 level as calculated by the Court is 15 or higher and provided
2 that the Court does not depart downward in offense level or
3 criminal history category. For purposes of this agreement, the
4 low end of the Sentencing Guidelines imprisonment range is that
5 defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A.

6 BREACH OF AGREEMENT

7 18. If defendant, at any time after the execution of this
8 agreement, knowingly violates or fails to perform any of
9 defendant's agreements or obligations under this agreement ("a
10 breach"), the USAO may declare this agreement breached. If the
11 USAO declares this agreement breached at any time following its
12 execution, and the Court finds such a breach to have occurred,
13 then: (a) if defendant has previously entered a guilty plea,
14 defendant will not be able to withdraw the guilty plea, and
15 (b) the USAO will be relieved of all of its obligations under
16 this agreement.

17 19. Following the Court's finding of a knowing and willful
18 breach of this agreement by defendant, should the USAO elect to
19 pursue any charge that was either dismissed or not filed as a
20 result of this agreement, then:

21 a) Defendant agrees that any applicable statute of
22 limitations is tolled between the date of defendant's signing of
23 this agreement and the commencement of any such prosecution or
24 action.

25 b) Defendant gives up all defenses based on the statute
26 of limitations, any claim of pre-indictment delay, or any speedy
27 trial claim with respect to any such prosecution, except to the
28 extent that such defenses existed as of the date of defendant's

1 signing this agreement.

2 c) Defendant agrees that: (i) any statements made by
3 defendant, under oath, at the guilty plea hearing (if such a
4 hearing occurred prior to the breach); (ii) the stipulated
5 factual basis statement in this agreement; and (iii) any evidence
6 derived from such statements, are admissible against defendant in
7 any such prosecution of defendant, and defendant shall assert no
8 claim under the United States Constitution, any statute, Rule 410
9 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules
10 of Criminal Procedure, or any other federal rule, that the
11 statements or any evidence derived from any statements should be
12 suppressed or are inadmissible.

13 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

14 20. Defendant gives up the right to appeal any sentence
15 imposed by the Court and the manner in which the sentence is
16 determined, provided that (a) the sentence is within the
17 statutory maximum specified above and is constitutional, and
18 (b) the Court imposes a sentence within or below the range
19 corresponding to a total offense level of 15, and the applicable
20 criminal history category as determined by the Court. Defendant
21 also gives up any right to bring a post-conviction collateral
22 attack on the conviction or sentence, except a post-conviction
23 collateral attack based on a claim of ineffective assistance of
24 counsel, a claim of newly-discovered evidence, or an explicitly
25 retroactive change in the applicable Sentencing Guidelines,
26 sentencing statutes, or statutes of conviction. Notwithstanding
27 the foregoing, defendant retains the ability to appeal the
28 conditions of supervised release imposed by the Court, with the

1 exception of the following: conditions set forth in General
2 Orders 318 and 01-05 of this Court; the drug testing conditions
3 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol
4 and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

5 21. The USAO gives up its right to appeal the sentence,
6 provided that (a) the sentence is within the statutory maximum
7 specified above and is constitutional, and (b) the Court imposes
8 a sentence within or above the range corresponding to a total
9 offense level of 15, and the applicable criminal history category
10 as determined by the Court.

11 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

12 22. Defendant agrees that if any count of conviction is
13 vacated, reversed, or set aside, the USAO may: (a) ask the Court
14 to re-sentence defendant on any remaining count of conviction,
15 with both the USAO and defendant being released from any
16 stipulations regarding sentencing contained in this agreement,
17 (b) ask the Court to void the entire plea agreement and vacate
18 defendant's guilty plea on any remaining count of conviction,
19 with both the USAO and defendant being released from all of their
20 obligations under this agreement, or (c) leave defendant's
21 remaining conviction, sentence, and plea agreement intact.
22 Defendant agrees that the choice among these three options rests
23 in the exclusive discretion of the USAO.

24 COURT NOT A PARTY

25 23. The Court is not a party to this agreement and need not
26 accept any of the USAO's sentencing recommendations or the
27 parties' stipulations. Even if the Court ignores any sentencing
28 recommendation, finds facts or reaches conclusions different from

1 any stipulation, and/or imposes any sentence up to the maximum
2 established by statute, defendant cannot, for that reason,
3 withdraw defendant's guilty plea, and defendant will remain bound
4 to fulfill all defendant's obligations under this agreement. No
5 one -- not the prosecutor, defendant's attorney, or the Court --
6 can make a binding prediction or promise regarding the sentence
7 defendant will receive, except that it will be within the
8 statutory maximum.

9 NO ADDITIONAL AGREEMENTS

10 24. Except as set forth herein, there are no promises,
11 understandings or agreements between the USAO and defendant or
12 defendant's counsel. Nor may any additional agreement,
13 understanding or condition be entered into unless in a writing
14 signed by all parties or on the record in court.

15 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

16 25. The parties agree and stipulate that this Agreement
17 will be considered part of the record of defendant's guilty plea
18 hearing as if the entire Agreement had been read into the record
19 of the proceeding.

20 This agreement is effective upon signature by defendant and
21 an Assistant United States Attorney.

22 AGREED AND ACCEPTED

23 UNITED STATES ATTORNEY'S OFFICE
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25 ANDRÉ BIROTTE JR
26 United States Attorney

27 
28 CHARLES E. PELL
Assistant United States Attorney

7/29/10
Date

1 I have read this agreement and carefully discussed every
2 part of it with my attorney. I understand the terms of this
3 agreement, and I voluntarily agree to those terms. My attorney
4 has advised me of my rights, of possible defenses, of the
5 sentencing factors set forth in 18 U.S.C. § 3553(a), of the
6 relevant Sentencing Guidelines provisions, and of the
7 consequences of entering into this agreement. No promises or
8 inducements have been given to me other than those contained in
9 this agreement. No one has threatened or forced me in any way to
10 enter into this agreement. Finally, I am satisfied with the
11 representation of my attorney in this matter.

12
13 Nathan Wells
14 NATHAN RAMON WELLS
Defendant

7/28/10
Date

15 I am NATHAN RAMON WELLS's attorney. I have carefully
16 discussed every part of this agreement with my client. Further,
17 I have fully advised my client of his rights, of possible
18 defenses, of the sentencing factors set forth in 18 U.S.C.
19 § 3553(a), of the relevant Sentencing Guidelines provisions, and
20 of the consequences of entering into this agreement. To my
21 knowledge, my client's decision to enter into this agreement is
22 an informed and voluntary one.

23
24 Angela Viramontes
25 ANGELA E.C. VIRAMONTES
Counsel for Defendant
26 NATHAN RAMON WELLS

7-28-10
Date